condition, the court should not in effect make a new contract for the parties. *Norwaysz* v. *Thuringia Ins. Co., supra.* A conflict of authority likewise exists in many analogous cases, but the result reached in the instant case has been upheld, where the insured sells the premises in violation of the condition, but rebuys before the fire, *Bemis* v. *Harborcreek Mut. Fire Ins. Co.* (1901) 200 Pa. 340, 49 Atl. 769; *contra, Schloss & Kahn* v. *Westchester Fire Ins. Co.* (1904) 141 Ala. 566, 37 So. 701, or where the forbidden encumbrances are removed before the loss occurs, *Jones & Pickett* v. *Michigan Fire etc. Ins. Co.* (1913) 132 La. 847, 61 So. 846; *contra, Born* v. *Home Ins. Co.* (1900) 110 Iowa 379, 81 N. W. 676, or where the prohibited repairs are completed before the fire, *Hill* v. *Middlesex Mut. Fire Ins. Co.* (1899) 174 Mass. 542, 55 N. E. 319, or where before the fire the insured reoccupies the premises which were not to be vacated, *German Ins. Co.* v. *Russell* (1902) 65 Kan. 373, 69 Pac. 345; *contra, Ins. Co. of N. H.* v. *Pitts* (1906) 88 Miss. 587, 41 So. 5, or where the unauthorized use of the premises ceases before the damage is sustained. *Concordia Fire Ins. Co.* v. *Johnson* (1896) 4 Kan. App. 7, 45 Pac. 722; *contra, Hinckley* v. *Germania Fire Ins. Co.* (1885) 140 Mass. 38, 1 N. E. 737. It is submitted that the principal case reached the logical conclusion as well as the one best carrying out the intention of the parties.

MASTER AND SERVANT—CORPORATIONS—LIABILITY IN TRESPASS FOR THE TORTS OF ITS SERVANTS.—The plaintiff while a passenger on the defendant's train was assaulted by the conductor in a dispute over the fare. The Statute of Limitations had run against an action on the case, but not against an action of trespass. *Held,* the defendant was liable in trespass. *Louisville & N. R. R.* v. *Lacey* (Ala. 1919) 82 So. 636.

One who authorizes or commands another to commit trespass upon the person or property of others, is himself liable in trespass. *Gregory* v. *Piper* (1829) 9 B. & C. 591; *Moir* v. *Hopkins* (1815) 16 Ill. 313; *May* v. *Bliss* (1855) 22 Vt. 477. This principle has been applied to corporations where the authorization or command was given by the directors, acting within the scope of their authority. *Crawfordsville & Wabash R. R.* v. *Wright* (1854) 5 Ind. 252; *Chicago & Rock Island R. R.* v. *Fell* (1859) 22 Ill. *333; *Central of Georgia Ry.* v. *Freeman* (1904) 140 Ala. 581, 37 So. 387 (*semble*). On the other hand, the courts have almost uniformly held that case and not trespass is the proper remedy against a master where the acts of his servant were not authorized or commanded, whether the master be an individual or a corporation. *Illinois Central R. R.* v. *Reedy* (1856) 17 Ill. 580; *Southern Ry.* v. *Yancy* (1904) 141 Ala. 246, 37 So. 341; *Philadelphia etc. R. R.* v. *Wilt* (Pa. 1839) 4 Whart. 143; *Bath* v. *Caton* (1877) 37 Mich. 199; *Gordon* v. *Rolt* (1849) 7 Dowl. & L. 87; *contra, Andrus* v. *Howard* (1836) 36 Vt. 248; *Brokaw* v. *N. J. R. R. & Transportation Co. and Campbell* (1867) 32 N. J. L. 328 (*semble*). In the instant case it was argued that under certain circumstances the acts of particular servants are

the direct "personal" acts of the corporation, these servants being called the *alter ego* of the corporation. While it may be that, since a corporation can act only through the agency of individuals, the acts of those controlling its affairs are given the same legal effect as if they were its acts, such a principle should not be extended beyond the officers and directors, and unless they authorize the act of a subordinate, case and not trespass is the proper remedy. *Illinois Central R. R.* v. *Reedy, supra; Southern Ry.* v. *Yancy, supra; Philadelphia etc. R. R.* v. *Wilt, supra.* The question involved is of importance not only where a statute of limitations has run against an action on the case, but also as regards the measure of damages, since by permitting trespass against the master and calling the unauthorized wilful act of the servant the act of the master, exemplary damages would be allowed in those jurisdictions which allow only compensatory damages in an action on the case under the same circumstances. 1 Sedgwick, Damages (9th ed.) §363; *Foley* v. *Martin* (1904) 142 Cal. 256, 71 Pac. 165 (*semble*).

NEGOTIABLE INSTRUMENTS—NEGOTIABILITY—CONDITIONAL PROMISE.—On the face of a promissory note in the usual form, given by the plaintiff to the German Bank as payee, was this marginal memorandum: "This note was given to reimburse the German Bank for Cert. of deposit No. 1187 . . ." The due date and the amount of the certificate, given to the plaintiff by the bank, corresponded to those of the note. *Held*, three judges dissenting, the marginal memorandum made the promise conditional, and the note was non-negotiable under the Negotiable Instruments Law §§1 (2) and 3. *Sacred Heart etc. Committee* v. *Manson* (Ala. 1919) 82 So. 498.

The memorandum reveals as consideration for the note another promissory note. *Hatch* v. *First Nat'l. Bank* (1900) 94 Me. 348, 47 Atl. 908. But a promise made in consideration of a reciprocal undertaking is not as a result a conditional promise, although disclosing a transaction in the nature of a bilateral contract. *Buchanan* v. *Wren* (1895) 10 Tex. Civ. App. 560, 30 S. W. 1077. The fact that the act which is the subject of the reciprocal engagement may not be performed does not qualify a promise made in reliance on that engagement. *Siegel* v. *Chicago Trust & Savings Bank* (1890) 131 Ill. 569, 23 N. E. 417. Thus a note is negotiable which recites that it is given for rent not yet due, though the maker may never have the enjoyment of the premises; *Simmons* v. *Council* (1908) 5 Ga. App. 386, 63 S. E. 238; but *cf. Post* v. *Kinzua Hemlock Ry.* (1895) 171 Pa. 615, 33 Atl. 362; or for a chattel, title to which is to remain in the vendor till the note is paid. See *Citizens Nat'l. Bank* v. *Bucheit* (1916) 14 Ala. App. 511, 523, 71 So. 82; Brannan, Ann. Neg. Instr. Law (2nd ed.) 224. The conditionality of the promise must appear expressly on the face of the note, *White* v. *Cushing* (1896) 88 Me. 339, 34 Atl. 164, or impliedly, from the language used, as the intent of the maker. *Equitable Trust Co.* v. *Taylor* (1911) 146 App. Div. 424, 131 N. Y. Supp. 475 (*semble*); Norton, Bills & Notes (4th ed.) 47n. The memorandum in the instant case discloses a